



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

75 Hawthorne Street
San Francisco, CA 94105

SEP 29 2004

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SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

John Robertus
Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Robertus:

We have reviewed the draft NPDES permit (number CA0001368) for Duke Energy LLC, South Bay Power Plant (SBPP), and are aware that the Regional Board will be making significant changes to the permit, and will therefore be renoticing. Although EPA would like to minimize California's permit backlog, we understand the complexity of this permit and the need for a thorough public process. Therefore, we support your plan to renotice.

Additionally, we encourage the Regional Board to use current and available information on the impacts of SBPP's cooling water intake structures to determine permit provisions necessary to minimize adverse environmental impacts pursuant to section 316(b) of the Clean Water Act. Examples of possible permit provisions include studies to determine technological upgrades or workplans for restoration. Although we understand that further studies may be necessary to fully comply with the new 316(b) Phase II rule, the Regional Board should use best professional judgement to include provisions in this permit necessary to minimize adverse impacts, based on existing information.

The EPA Q & A document (<http://www.epa.gov/waterscience/316b/phase2-q-and-a.pdf>) provides guidance on the implementation of the 316(b) Phase II rule. The document discusses the situation where a draft permit is proposed after the 316(b) Phase II rule takes effect, which will be the case for this permit. For this case, the document states:

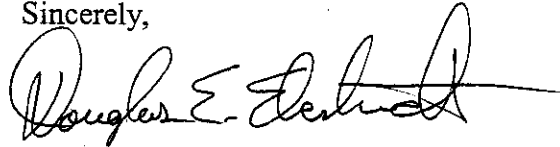
- (1) where the company has not submitted the information required in the Phase II rule the 316(b) limitations in the proposed and final permit would be based on Best Professional Judgement (BPJ) under authority of 40 C.F.R. § 125.95(a)(2)(ii), and
- (2) The permit will need to include a schedule requiring the facility to submit the comprehensive demonstration study and other information required by 40 C.F.R. § 125.95 as expeditiously as practicable but not later than January 7, 2008.

As we stated in our previous comments to the Regional Board, EPA encourages the Regional Board to shorten the timeframe for the discharger to complete the Comprehensive Demonstration

Study. The present tentative order allows the discharger nearly 4 years to complete the Comprehensive Demonstration Study under 316(b). Because it appears that the 2003 impingement and entrainment study contains some of the information that will be required for the Comprehensive Demonstration Study, we believe it is "expeditious and practicable" for SBPP to accomplish this in less than four years.

We look forward to reviewing the next draft of this permit, and appreciate the Regional Board's efforts on these issues. If you have any questions, please contact me at (415) 972-3420, or have you staff contact Kim Driver at (415) 972-3539 or Nancy Yoshikawa at (415) 972-3535.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas E. Eberhardt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas E. Eberhardt
Manager, CWA Standards and Permits Office